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RESCISSION BY THIRD PARTY PRIOR TO PRINCIPAL'S RATIFICATION OF AGENT'S UNAUTHORIZED ACTION

Ratification[1] by an alleged principal of acts that another person has assumed to do in his behalf without prior authorization gives rise to two general questions. First, can the person who ratifies be held liable for or be bound by the acts he has ratified? Second, can the person who ratifies bind the person that his assumed agent has presumed to bargain with if this person attempts to withdraw before the alleged principal ratifies? Each question presents conditions and refinements.

The present discussion will be confined to the second of the above questions—*viz.*, Can the third party recede from the agreement prior to ratification by the principal? Three or four different answers have been given to this question. The theories sustaining these answers will now be considered in detail.

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1. In order for an act to be capable of ratification certain conditions must be satisfied. (1) The act must be unauthorized. HUFFCUT, AGENCY § 30 (2d ed. 1901); 1 MECHEM, AGENCY, § 347 (2d ed. 1914); STORY, AGENCY § 240 (5th ed. 1857). A distinction is made between void and voidable acts; TIFFANY, AGENCY § 45 (2d ed., Powell, 1924); Breckenridge, *Ratification in North Carolina*, 18 N. C. L. REV. 308, 309 (1940). (2) It must be an act which the principal could have authorized. Supervisors v. Schenck, 5 Wall. 772, 18 L. Ed. 556 (U. S. 1866); Breslin v. National Surety Co., 114 F. 2d 65 (C. C. A. 3d 1930); Henry Christian Building & Loan Ass'n v. Walton, 181 Pa. 201, 37 Atl. 261 (1897); RESTATEMENT, AGENCY § 84 (1933). (3) The act must have been done in behalf of the alleged principal. Flowe v. Hartwick, 167 N. C. 448, 83 S. E. 841 (1914), 13 MICH. L. REV. 523 (1915); Nowata Oil Syndicate v. Commercial Nat. Bank, 93 Okla. 6, 219 Pac. 339 (1923), 22 MICH. L. REV. 474 (1924). See generally, HUFFCUT, AGENCY § 31 (2d ed. 1901); 1 MECHEM, AGENCY § 347 (2d ed. 1914); RESTATEMENT, AGENCY § 85 (1933); Seavey, *The Rationale of Agency*, 29 YALE L. J. 859, 890 (1920). (4) It must be an act from which absurd and unjust results will not follow if ratified. Chicago, Milwaukee & St. Paul Ry. Co. v. United States, 244 U. S. 351, 37 Sup. Ct. 625, 61 L. Ed. 1184 (1917) (principal must ratify entire act); RESTATEMENT, AGENCY § 96 (1933); 5 TEMP. L. Q. 305 (1931) (a "principal cannot in part ratify and in part repudiate an act of his agent"). An additional requirement is that the principal have knowledge of the material facts. 64 U. OF PA. L. REV. 316 (1916) ("Except in those cases where the principal intentionally assumes responsibility without inquiry, a ratification is not binding unless made with a full and complete knowledge of all the material facts."); see also, 29 W. Va. L. Q. 67 (1922). Ratification must not affect rights of intervening third parties. United States v. Heinszen & Co., 206 U. S. 370, 27 Sup. Ct. 742, 51 L. Ed. 1098 (1907); RESTATEMENT, AGENCY § 101(c) (1933).

Ratification has been erroneously considered as estoppel. "It has nothing to do with estoppel, but the desire to reduce the law to general principles has led some courts to cut it down to that point." Holmes, *Agency*, 5 HARV. L. REV. 1, 19 (1891). See also, 1 MECHEM, AGENCY § 349 (2d ed. 1914) (how ratification differs from estoppel); RESTATEMENT, AGENCY §§ 94, 103 (1933); Stern, *A Problem in the Law of Agency*, 4 MARQ. L. REV. 6 (1919) (discussing estoppel). As the commentator says in 8 TEX. L. REV. 576 (1930): "It is usually stated that there is a duty on the principal to repudiate an unauthorized act of his agent within a reasonable time, and that a long delay in disavowing such an act will amount to a ratification of it. This statement is perhaps not strictly correct, for rather than being under a duty to disaffirm, the principal is merely put to his election as to whether he will ratify the act or not, and delay in expressing himself will be evidence of an intent to do so. Ratification is based on intention and the principal's silence is important only insofar as it shows what his intention is."

ENGLISH VIEW

The English theory, as advanced by the Court of Appeals in *Bolton Partners v. Lambert*,[2] is to the effect that the third party cannot recede. The basis of this view is that the transaction is completed at the time the unauthorized agent enters into the agreement with the third party. The only missing factor is the assent of the principal to the agreement accepted for him by the agent. Ratification serves as the proof of the agent's authority to act for the principal and relates back to the time of the doing of the act.[3]

Limited support for the English theory can be found in the United States. In *Andrews v. Aetna Life Ins. Co.*,[4] the agent of the defendant insurer placed in a life insurance policy an unauthorized clause which the defendant subsequently ratified after the plaintiff had attempted to rescind it. The New York Court of Appeals stated that the "principal, upon being informed of an act of an agent in excess of his authority, has the right to elect whether he will adopt the unauthorized act, or not, and so long as the condition of the parties is unchanged, he cannot be prevented from such adoption because the other party to the contract may for any reason prefer to treat the contract as invalid, and his election, once made, is irrevocable."

It has been suggested that the view expressed in the *Bolton* case has been modified to the extent that ratification must come within a reasonable time. "Since the standard of reasonableness is a question of fact, [this modification] . . . provides a useful escape from the rigours of the rule in Bolton v. Lambert as originally known." [5]

An additional method has been suggested to lessen the "unfairness" of the English theory. In *Walter v. James* it was held that where an unauthorized transaction was entered into by an agent and a third party that these two

2. 41 Ch. D. 295 (C. A. 1887). The case of *In re* Portuguese Consolidated Copper Mines Ltd., 45 Ch. D. 16 (1890), has been frequently cited as supporting the decision of the *Bolton* case. However, the court in the *Portuguese Mines* case stressed the fact that the third party had not attempted to repudiate. In a modern comment on the English view it was said, "It is interesting to note that although forty years have elapsed. . . the decision in *Bolton v. Lambert* has yet to be expressly overruled either by the House of Lords or the Privy Council, or in any of the appellate courts of Canada." Tamaki, *The Rule in Bolton v. Lambert*, 19 CAN. B. REV. 733 (1941).

3. Bolton Partners v. Lambert, 41 Ch. D. 295, 309 (C. A. 1887). The court stated: "[T]here was a contract made by *Scratchley* assuming to act for the Plaintiffs, subject to proof by the Plaintiffs that *Scratchley* had that authority. The Plaintiffs subsequently did adopt the contract, and thereby recognized the authority of their agent *Scratchley*. Directly they did so the doctrine of ratification applied and gave the same effect to the contract made by *Scratchley* as it would have had if *Scratchley* had been clothed with a precedent authority to make it." The court to substantiate its finding and to show the harshness of this rule referred to Hagedorn v. Oliverson, 2 Mau. & Sel. 485, 105 Eng. Rep. 461 (K. B. 1814), where the principal was allowed to ratify even after known loss. But this case is controlled by maritime law and therefore being a recognized exception, does not furnish an adequate basis for the decision of the *Bolton* case.

4. Andrews v. Aetna Life Ins. Co., 92 N. Y. 596, 604 (1883); see also 1 MECHEM, AGENCY § 517 (2d ed. 1914); STORY, AGENCY § 245-248 (5th ed. 1857).

5. Tamaki, *The Rule in Bolton v. Lambert*, 19 CAN. B. REV. 733, 745 (1941).

parties could "undo what they had done." [6] The reasoning given for this decision was that where two parties enter into a contract the same two parties can mutually agree to dissolve it. This explanation seems inadequate because the contract that the third party intended to make was with the principal and not with the agent. This is the very basis for allowing the subsequent ratification of the contract by the principal and to say that it is now a contract between the agent and the third party is to deny the existence of the doctrine of ratification. Perhaps a hypothetical example will help to clarify this. Suppose *A*, without authority, offers to sell *T* Blackacre, which is owned by *P*. According to the decision in *Bolton v. Lambert*, *P* by ratifying the contract merely supplies the proof of *A's* authority.[7] *T* is not allowed to recede at any time. To allow *T* to agree with *A* to recede is inconsistent with the basis of the decision in *Bolton v. Lambert* because it would in effect be saying that there was no relation between *P* and *T* prior to ratification. While the result—permitting the agent and the third party to recede from the transaction—may be a salutary one, the reasoning given appears anomalous.

This English theory applies the doctrine of ratification without regard to the injustice it may produce in a particular case.[8] It has been suggested that "in *Bolton Partners v. Lambert* the court laid too much stress upon the maxim, which at most tells what is the effect of ratification when it is conceded that ratification does have some effect, and too little stress upon the rules indicating when ratifieation is, and when it is not, admissible. When the result of permitting ratification is . . . to allow the unbound principal time to profit by developments in the market, while the adverse party is bound *ab initio* and has no power to withdraw from the unexpectedly unequal transaction, the result is so unjust as to make this an unfit place for applying the doctrine of relation." [9]

AMERICAN VIEW

In the United States the prevailing doctrine is that the third party may recede from the contract prior to ratification by the principal.[10] The explanations advanced, however, are somewhat at variance.

The view supported by the greater number of states is that the third party

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6. Walter v. James, L. R. 6 Ex. 124, 127 (1871).
7. See note 3 *supra*.
8. "The English Cases . . . must be wrong. To say that to allow the third person to withdraw before P has had a reasonable opportunity to ratify is to 'deprive the doctrine of its retroactive effect' and cause it not to be 'equipollent to a prior command' is to worship the fiction of relation back as a transcendental shrine and justifies the harshest language used by critics of the doctrine." Seavey, *The Rationale of Agency*, 29 YALE L. J. 859, 891 (1920).
9. Wambaugh, *A Problem as to Ratification*, 9 HARV. L. REV. 60, 68 (1895). An extensive treatment of this problem is presented here.
10. Clews v. Jamieson, 182 U. S. 461, 21 Sup. Ct. 845, 45 L. Ed. 1183 (1901); Moore v. Petty, 135 Fed. 668 (C. C. A. 8th 1905); Townsend v. Corning, 23 Wend. 435 (N. Y.

can recede prior to ratification because of the lack of mutuality. Since the principal is not bound by the act of the unauthorized agent the third party should not be bound if he wishes to withdraw. However, as soon as the principal does ratify the unauthorized transaction the mutuality which was lacking is then present. The principal cannot then withdraw his ratification nor can the third party effectively recede. The parties are bound to the terms of the entire agreement as if they had been the original contracting parties.

It is apparent from this explanation that the third party is treated as having entered into a contract with the unauthorized agent. This transaction has been considered as an act in the nature of an offer which differs from an ordinary offer in that it does not expire of its own accord within a reasonable time, as an ordinary offer would.[11] Others have selected the term "conditional contract" as a name for this transaction.[12] These are both unfortunate misnomers. The first is contrary to the intent of the parties since more than an offer was intended and more than an offer resulted. The latter is guilty of the same defect. The parties neither expressed nor intended a condition to be embodied in their contract. An analogous situation will clarify this misconceived approach. Suppose in a two-party situation *A* offers to sell Blackacre to *B* and *B* accepts this offer. Will the fact that *A* did not own Blackacre make this transaction entered into by the parties less than a contract? *B* cannot have specific performance of the contract but this is not a right assured to every contracting party.[13] *B* is entitled to damages resulting from this disappointment. If this is a "conditional contract" or "in the nature of an offer" then it would seem that *B* would have no cause of action on the contract. The parties bargained for the sale of Blackacre and to construe their acts otherwise would be to make a different contract for them. Is there any reason to say that an unauthorized agent and a third party in a given situation did not enter into a contract? Offer, acceptance and consideration are present. The mere fact that the agent was unauthorized to enter the contract should not affect the terminology as to the transaction nor as to the relationship of the parties to any greater extent than shown in the example above. If this transaction is treated as a contract and if it is recognized that the third party has no rights against the principal until the latter assents to be bound according to the agreement, the necessity of misinterpreting the intent of the parties will be avoided. The third party retains his right against the unauthorized agent

1840); Athe v. Bartholemew, 69 Wis. 43, 33 N. W. 110 (1887); HUFFCUT, AGENCY § 38 (2d ed. 1901); RESTATEMENT, AGENCY § 88 (1933) ("To constitute ratification, the affirmance of a transaction must be before the third person has manifested his withdrawal from it either to the purported principal or to the agent, and before the offer or agreement has otherwise terminated or been discharged"); Note, 5 Am. St. Rep. 109, 112 (1889).

11. Wambaugh, *supra* note 9, at 67.

12. *Ibid.*

13. 5 WILLISTON, CONTRACTS § 1425 (Rev. ed. 1937).

and he is in no worse position than *B* was in the example given above where there were only two parties involved.[14]

In discussing this problem it may be helpful to point out that a person dealing with an agent has the duty of using reasonable diligence and prudence to ascertain the extent of the agent's authority.[15] He has the burden of ascertaining the extent of the agent's authority in his dealings with him. If the third party in a given situation neglects to do this and is thereby injured, he has a cause of action against the agent on the agent's implied warranty of his authority, but no rights against the supposed principal.[16] If the principal in the meantime ratifies the transaction prior to the third party's discovery of this lack of authority then the third party has suffered no greater detriment than if the agent had authority in the first instance. The third party receives exactly what he bargained for and should not now be heard to complain of this lack of authority.[17]

The American rule recognizes the relationship of the parties and allows ratification when it will cause no greater disadvantage to either party than would have occurred if the act were originally authorized. On the other hand this rule decreases the harshness of the English position by permitting the third party to withdraw from the agreement prior to ratification upon discovery of the lack of authority. A withdrawal by the third party prior to ratification will not in any respect injure the unsuspecting principal and will prevent the disadvantage which might result to the third party if he were refused this right to withdraw.

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14. "This is exactly what the doctrine of ratification does. T gets what he expected, neither more nor less. He did not expect or desire a claim against A and he has no reason to be disappointed if it is taken away. He did expect and desire a contract with P and that is what he receives, including the date and place to which he assented. But it is argued, P receives a godsend. In a changing market he has the choice of accepting or rejecting the contract. This does no harm, however, unless the third person is in some way injured. If the principal does not assent, he has not injured the third person; there is no ratification and no anomaly. The third person may sue the one who has caused the loss, viz., A. If he does ratify, the fact that he was not bound in the meantime cannot be of importance since it has not influenced T. The latter with his lack of knowledge is entitled to no sympathy. It is a human trait to shiver at perils which have passed us by in our sleep, but such were only potential and not actual injuries." Seavey, *The Rationale of Agency*, 29 YALE L. J. 859, 888 (1920).

15. This general principle was clearly stated in Brutinel v. Nygren, 17 Ariz. 491, 154 Pac. 1042, 1045 (1916), where the court said: "The mere fact that one is dealing with an agent, whether the agency be general or special, should be a danger signal, and like a railroad crossing suggests the duty to 'stop, look and listen,' and if he would bind the principal is bound to ascertain, not only the fact of agency, but the nature and extent of the authority, and in case either is controverted the burden of proof is upon him to establish it." See also, 1 MECHEM, AGENCY §§ 743-750 (2d ed. 1914).

16. At one time it was thought that the agent's liability was on the contract, but today the generally accepted view is that the agent's liability is predicated on the breach of his implied warranty of authority. Clements v. Citizens Bank of Booneville, 177 Ark. 1085, 9 S. W. 2d 569 (1928); Murray Oil Products Co. v. Poons Co., 190 Misc. 110, 74 N. Y. S. 2d 814 (N. Y. City Ct. 1947); Brawley v. Anderson, 80 Ohio App. 15, 74 N. E. 2d 428 (1947); Memphis Cotton Press & Storage Co. v. Hanson, 4 Tenn. App. 293 (1926). Notes, 42 A. L. R. 1310 (1926); 60 A. L. R. 1348 (1929); 64 A. L. R. 1194 (1929); RESTATEMENT, AGENCY § 338 (1933).

17. See note 14 *supra*.

WISCONSIN RULE

In *Dodge v. Hopkins*[18] the Supreme Court of Wisconsin announced a rule which has in essence refuted the doctrine of ratification. Dodge and his wife executed a letter of attorney giving Coolbaugh authority to sell certain land purportedly held jointly by them. Coolbaugh entered into a contract with Hopkins to convey specific realty for a sum certain. Dodge, who was the sole owner of the property, attempted to ratify this unauthorized act. The Supreme Court of Wisconsin reversed the judgment of the lower court which allowed Dodge recovery on the contract, and stated that the "principal in such case may, by his subsequent assent, bind himself, but if the contract be executory, he cannot bind the other party. The latter may, if he choose, avail himself of such assent *against* the principal, which, if he does, the contract, by virtue of such *mutual* ratification, becomes *mutually* obligatory." [19] In speaking of "mutual ratification," the court is really saying that the original transaction was a nullity, since a new offer and acceptance are required, and thereby destroying the doctrine of ratification.

Judge Dixon in his opinion was disturbed by the "*dicta* and observations to be found in the books," [20] which state the doctrine of ratification as applied to similar cases by other courts. He attempts to evolve a distinction between cases in which the principal seeks to use ratification as the basis for an action against the third party and those in which the third party attempts to base a demand against the principal upon this ratification. The conclusion reached was that this case falls in the former category and therefore the ratification is unavailing unless the third party also assents to be bound. This attempted distinction is subject to the same criticism as the Wisconsin rule itself because to say that ratification applies in those cases in which the third party seeks to benefit by the ratification is just another way of requiring assent by the third party.

This view expressed by the Wisconsin court is in keeping with the American view that the third party may recede prior to ratification.[21] But it extends the requisites of ratification to an extent which has not been followed by other courts. Wisconsin has taken this stand and refused to reconsider its original position for eighty odd years.[22]

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18. 14 Wis. 686 (1861); HUFFCUT, AGENCY § 38 (2d ed. 1901); 1 MECHEM, AGENCY § 515 (2d ed. 1914); Seavey, *The Rationale of Agency*, 29 YALE L. J. 859, 891 (1920); Wambaugh, *A Problem as to Ratification*, 9 HARV. L. REV. 60, 64 (1895); Note, [1947] WIS. L. REV. 394.

19. Dodge v. Hopkins, 14 Wis. 686, 695 (1861).

20. *Id.* at 694.

21. See note 10 *supra*.

22. [1947] WIS. L. REV. 394. Louisiana has a statute which adopts the American view [LA. CIVIL CODE ANN., art. 1840 (1945)], but courts of that state have ignored the statute and at various times have approved the American view, the Wisconsin view and the view expressed by the *Restatement of Agency*. Note, 5 LA. L. REV. 308, 310 (1943).

This rule has suffered extensive criticism[23] and it has been suggested that "when the courts of Wisconsin are again faced with the problem of the effect of ratification on the rights and liabilities of third parties, they adopt the view announced in the Restatement of Agency." [24]

The *Restatement of Agency* states a rule which combines the doctrine of ratification as followed by the American courts with an equitable exception designed to prevent unjust results. If the "situation has so materially changed that it would be inequitable to subject him [the third party] to liability thereon" affirmance will not be effective as ratification.[25]

RATIFICATION OF INSURANCE AFTER FIRE-LOSS

The American courts have recognized the right of the principal to ratify a contract of insurance entered into by an unauthorized agent with the third party (insurer) even after loss by fire.[26] But ratification must come before actual withdrawal by the third party.[27] The courts and commentators, although arriving at the identical result, have resorted to sociological and commercial arguments to justify the right of ratification in insurance fire-loss cases. This is a needless retreat because the problem is the same whether the contract be of insurance or for the sale of property. In the latter situation American courts permit ratification even though the third party has made what results in a disadvantageous agreement. The third party gets exactly what he bargained for in one situation as well as in the other. In both, the principal can reap what he has not sown.

The English view appears to be that the principal cannot ratify after fire-loss in an insurance transaction.[28] This is contrary to the result reached in *Bolton v. Lambert,*[29] where, it will be recalled, ratification was permitted even though prior to this the third party had attempted to withdraw. A pos-

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23. HUFFCUT, AGENCY § 38 (2d ed. 1901); 1 MECHEM, AGENCY § 515 (2d ed. 1914); TIFFANY, AGENCY § 62 (2d ed., Powell, 1924); Wambaugh, *A Problem as to Ratification,* 9 HARV. L. REV. 60, 64 (1895); [1947] WIS. L. REV. 394, 395. Mr. Mechem states that he believes the Wisconsin rule sound. Mechem, *The Effect of Ratification as Between the Principal and the Other Party,* 4 MICH. L. REV. 269, 279 (1905).

24. [1947] WIS. L. REV. 394, 395.

25. RESTATEMENT, AGENCY § 89 (1933).

26. Marqusee v. Hartford Fire Insurance Co., 198 Fed. 475 (C. C. A. 2d 1912) *cert. denied,* 229 U. S. 621 (1913). This rule was recently affirmed in Equity Mutual Insurance Co. v. General Casualty Co. of America, 139 F. 2d 723 (C. C. A. 10th 1944). This same rule was relied upon to allow a customer of a laundry to ratify a bailee's-customer policy procured by the laundry to insure against loss or damage of the customer's goods. Automobile Ins. Co. v. Barnes-Manley Wet Wash Laundry Co., 168 F. 2d 381, 384 (C. C. A. 10th 1948). For an extensive treatment, see Robinson, *Ratification After Loss in Fire Insurance,* 18 CORN. L. Q. 161 (1933).

27. The court in the *Marqusee* case ordered a new trial in order to give the plaintiff (principal) an opportunity to show that he ratified the contract before the defendant withdrew. Marqusee v. Hartford Fire Insurance Co., 198 Fed. 475, 478 (C. C. A. 2d 1912).

28. Grover & Grover Ltd. v. Mathews, [1910] 2 K. B. 401, discussed in Robinson, *Ratification After Loss in Fire Insurance,* 18 CORN. L. Q. 161, 165 (1933).

29. See note *2 supra.*

sible explanation for this position may be that the court was under the impression that to extend the principal's right to ratification to an insurance situation where the property was destroyed by fire would be an unwarranted extension of an exception which had existed only as to marine insurance. But the court failed to recognize that the basic problem was identical to that in the *Bolton* case. There thus exists in England an anomalous situation; although the third party cannot withdraw under the *Bolton* rule, the same result is accomplished in fire-loss cases by denying the principal the right to ratify.

The *Restatement of Agency* adopts the English view in saying that ratification must come before such a material change in conditions that it would be inequitable to subject the third party to liability thereon.[30]

CONCLUSION

This survey of the contrasting theories demonstrates the limitations of words used by various courts and writers. Any attempt to resolve the problems of ratification by a superficial resort to the terminology of the law of agency or contracts is futile. An analysis of the transaction with the rights and corresponding liabilities of the parties is the only sound approach to the solution of this problem. At the time the assumed agent and the third party enter their agreement there is consideration for the third party's promise; the agent's warranty is sufficient consideration.[31] The third party at this point can rescind the contract because of mutual mistake, if the agent unknowingly exceeded his authority,[32] or because of a unilateral mistake, if the agent knew he had no authority.[33] However, if the third party fails to rescind the contract before the assumed principal ratifies then the third party should no longer be permitted to do so. The third party is receiving exactly what he bargained for and can not complain that he was bound while the principal was not.[34] Ratification is the juristic act which binds the rights and liabilities of the parties. Once the principal does ratify, the rights and liabilities of all three parties are altered. The principal is bound for the first time and he can not now withdraw his ratification.[35] The third party has lost his right to rescind because of the agent's lack of authority.[36] The agent is released from liability

30. RESTATEMENT, AGENCY § 89 (1933).

31. No new consideration is needed for ratification. 1 MECHEM, AGENCY § 351 (2d ed. 1914).

32. 5 WILLISTON, CONTRACTS §§ 1518, 1544, 1558 (Rev. ed. 1937); RESTATEMENT, AGENCY §§ 259, 260, 263 (1933); RESTATEMENT, CONTRACTS § 477(b) (1932); RESTATEMENT, RESTITUTION § 28(c) (1937).

33. 5 WILLISTON, CONTRACTS § 1578 (Rev. ed. 1937); RESTATEMENT, CONTRACTS § 503 (1932); 36 YALE L. J. 1183 (1927).

34. See Note 14 *supra*.

35. See note 1 *supra* for a discussion of the requisites which must be satisfied in order for ratification to bind the principal. Once the principal has effectively ratified he can not withdraw. Stark v. Starr, 94 U. S. 477, 24 L. Ed. 276 (1876); HUFFCUT, AGENCY § 45 (2d ed. 1901); RESTATEMENT, AGENCY § 102 (1933).

36. See note 10 *supra*. This is the prevailing American view, which states that the third party may withdraw at any time before ratification by the principal.

on his implied warranty of authority as the ratification has cured this defect.[37]

If this analysis is kept in mind, courts which recognize the doctrine would have less difficulty explaining their decisions and would eventually eliminate the confusion which is present in this field.

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37. See note 16 *supra*. "An agent after ratification of his unauthorized act by his principal is in the same relation to the third party as if the acts had been previously authorized. The principal alone is generally liable on a contract which he has ratified, though if the third party is free to accept or reject the ratification [as he is under the Wisconsin rule] and chooses to reject, the agent would be liable on his warranty of authority." HUFFCUT, AGENCY § 49 (2d ed. 1901).